

AMENDED IN ASSEMBLY MARCH 30, 2016

AMENDED IN ASSEMBLY MARCH 16, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1704**

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**Introduced by Assembly Member Dodd**

January 25, 2016

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An act to amend Sections 1228.3, 1228.6, and 1229.1 of, and to repeal and add Section 1229 of, the Water Code, relating to water rights.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1704, as amended, Dodd. Water rights.

Existing law requires applicants for appropriation of water for small domestic, small irrigation, or livestock stockpond use to register with the State Water Resources Control Board, as specified. Existing law requires the registration to include a certification that the registrant has contacted a representative of the Department of Fish and Wildlife and has agreed to comply with conditions set forth by the Department of Fish and Wildlife.

This bill would, instead, require the registrant to provide a copy of the registrant's registration form to the Department of Fish and Wildlife and agree to general conditions, as specified.

Existing law requires the board to establish general conditions to which all appropriations of water for small domestic, small irrigation, and livestock stockpond use are subject.

This bill would require the board to consult with the Department of Fish and Wildlife in establishing these general conditions and make compliance with certain Fish and Game Code requirements applicable to the diversion of water one of these conditions. The bill would also

declare that it is the intent of the Legislature that the general conditions simplify the issuance of registrations.

Under existing law, the board is not required to adopt general conditions for small irrigation use until the board determines that funds are available for that purpose and forbids registration for small irrigation use until these general conditions are established.

This bill would, instead, require the board to adopt general conditions for small irrigation use meeting certain timelines, and would specify certain of those general conditions. The bill would impose certain fees for these purposes.

Existing law exempts certain stream segments subject to minimum streamflow requirements under another law from these laws authorizing small domestic, small irrigation, and livestock stockpond use of water upon proper registration.

This bill would, instead, permit the board to issue and renew appropriations on these stream segments if the registration is consistent with certain requirements established by the Director of Fish and Wildlife.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1228.3 of the Water Code is amended to
- 2 read:
- 3 1228.3. (a) Registration of water use pursuant to this article
- 4 shall be made upon a form prescribed by the board. The registration
- 5 form shall include instructions on how the registrant should comply
- 6 with the general conditions adopted pursuant to Section 1228.6
- 7 and request the following from the registrant:
- 8 (1) The name and post office address of the registrant.
- 9 (2) The source of water supply.
- 10 (3) The nature and amount of the proposed use.
- 11 (4) The proposed place of diversion.
- 12 (5) The place where it is intended to use the water.
- 13 (6) The time for completion of construction of diversion works
- 14 and for complete application of the water to the proposed use.
- 15 (7) A certification that the registrant has provided a copy of the
- 16 completed registration form to a representative of the Department
- 17 of Fish and Wildlife designated by the department for this purpose

1 and agrees to comply with general conditions in accordance with  
2 Section 1228.6.

3 (8) Any other information that may reasonably be required by  
4 the board.

5 (b) Registration of water use shall be deemed completed on the  
6 date that the form, executed in substantial compliance with the  
7 requirements of this section, and the registration fee specified in  
8 Section 1525 are received by the board.

9 (c) The board shall issue monthly a list of registrations filed  
10 under this article during the preceding calendar month. This list  
11 shall contain the information required by paragraphs (1) to (6),  
12 inclusive, of subdivision (a). The list shall set forth a date prior to  
13 which an interested person may file a written protest in opposition  
14 to the approval of a stockpond registration. That date shall be not  
15 later than 30 days from the date on which the list is issued. The  
16 board shall mail the monthly list of registrations filed to a person  
17 who requests the list.

18 (d) Prior to the date set forth on the list required under  
19 subdivision (c), an interested person may file with the board a  
20 written protest in opposition to the approval of a stockpond  
21 registration. The protest shall clearly set forth the protestant's  
22 objections to the registered use based on interference with prior  
23 rights. The protest shall be served on the registrant by the protestant  
24 by mailing a duplicate copy of the protest to the registrant, or  
25 through service undertaken in another manner determined to be  
26 adequate by the board. The procedures set forth in Article 1.5  
27 (commencing with Section 1345) of Chapter 5 shall be used for  
28 reviewing a protested registration.

29 SEC. 2. Section 1228.6 of the Water Code is amended to read:

30 1228.6. (a) (1) The board shall, in consultation with the  
31 Department of Fish and Wildlife, establish, and may from time to  
32 time revise, reasonable general conditions to which all  
33 appropriations made pursuant to this article shall be subject. The  
34 conditions shall include, but shall not be limited to, the following:

35 (A) The appropriation shall be subject to prior rights.

36 (B) General conditions ~~shall be~~ applicable to the diversion of  
37 water as required by the Department of Fish and Wildlife to comply  
38 with the requirements in Chapter 6 (commencing with Section  
39 1600) of Division 2 of the Fish and Game Code. The general  
40 conditions may include requirements applicable only to specific

1 methods of diversion or categories of registration, commensurate  
2 with the project's environmental impact. These requirements may  
3 include, but shall not be limited to, ~~both~~ *each* of the following:

4 (i) An assessment to avoid potential site-specific impacts on  
5 fish and wildlife resources.

6 (ii) Submission of site-specific information.

7 (iii) *Consultation with the Department of Fish and Wildlife*  
8 *regarding the findings of the site-specific assessments and*  
9 *information.*

10 (iv) *Implementation of additional measures the Department of*  
11 *Fish and Wildlife lawfully deems necessary to avoid site-specific*  
12 *impacts, identified pursuant to clauses (i) to (iii), inclusive, on fish*  
13 *and wildlife resources.*

14 (C) Diversion works shall be constructed and water applied to  
15 beneficial use with due diligence.

16 (D) Registration shall be renewed and water use reported  
17 pursuant to law and to the rules of the board.

18 (2) It is the intent of the Legislature that the board and the  
19 Department of Fish and Wildlife adopt general conditions that  
20 simplify the issuance of registrations in a cost-effective and  
21 environmentally protective manner, and the regulatory burden of  
22 complying with the general conditions be commensurate with the  
23 complexity and number of resources potentially affected by the  
24 registration.

25 (b) Immediately upon registration pursuant to Section 1228.3,  
26 renewal of registration pursuant to Section 1228.5, or amended  
27 registration pursuant to Section 1228.7, the board shall provide  
28 the registrant with a written document setting forth the conditions  
29 required by this section, and the perfection and exercise of rights  
30 acquired pursuant to this article shall at all times be subject to those  
31 conditions.

32 (c) The conditions required by this section shall be deemed  
33 "terms and conditions" within the meaning of Section 1825 and  
34 the expression of legislative intent contained in that section shall  
35 be applicable thereto. The authority of the board to enforce the  
36 terms and conditions of permits and licenses to appropriate water,  
37 and to prevent the unlawful diversion of water, including, but not  
38 limited to, provisions regarding cease and desist orders and the  
39 revocation of permits and licenses, shall be applicable to  
40 appropriations initiated or perfected pursuant to this article.

1 SEC. 3. Section 1229 of the Water Code is repealed.

2 SEC. 4. Section 1229 is added to the Water Code, to read:

3 1229. (a) The board, no later than June 30, 2017, shall adopt  
4 general conditions that would permit a registrant to construct a  
5 facility that would store water for small irrigation use during times  
6 of high stream flow in exchange for that registrant reducing  
7 diversions during periods of low stream flow, pursuant to Section  
8 1228.6 and this section, for the following:

9 (1) (A) Diversions from coastal streams entering the Pacific  
10 Ocean and streams entering the San Francisco Bay to off-stream  
11 storage reservoirs or on-stream storage reservoirs located on stream  
12 reaches where fish are not present.

13 (B) Diversions under this paragraph from watersheds that  
14 support salmonid fisheries and from drainage areas of one square  
15 mile or less shall be subject to the following general conditions:

16 (i) Diversions from drainage areas greater than 0.50 square miles  
17 but no more than one square mile shall occur only from November  
18 1 to March 31 of each year and only when stream flow exceeds  
19 the February median flow at the point of diversion.

20 (ii) Diversions from drainage areas greater than 0.25 square  
21 miles but no more than 0.50 square miles shall occur only when  
22 stream flow exceeds the February median flow at the point of  
23 diversion.

24 (iii) Diversions from drainage areas 0.25 square miles or less  
25 may occur without season of diversion or minimum bypass  
26 requirements.

27 (C) No diversion under this paragraph may result in a cumulative  
28 stream flow depletion at the one square mile drainage that exceeds  
29 10 percent of the average annual volume of stream flow.

30 (2) Diversions from other streams for which, in the judgment  
31 of the board, the reduction in existing diversions during low flow  
32 periods will result in a benefit to fish and wildlife.

33 (b) Facilities to store water for small irrigation use adopted  
34 pursuant to subdivision (a) are subject to the following general  
35 conditions:

36 (1) No water shall be diverted or used under the registration,  
37 and no construction related to the diversion shall commence, until  
38 the applicant has obtained and is in compliance with all necessary  
39 permits and other approvals required by other agencies.

(2) Pursuant to Sections 100 and 275 and the common law public trust doctrine, all appropriations made under subdivision (a), including the method of diversion, purpose of water use, and quantity of water diverted, are subject to the continuing authority of the board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable purpose of use, or unreasonable method of diversion of water.

(3) (A) Diversion of water under the appropriation is subject to prior rights. An applicant may be required to curtail diversion or release water stored during the most recent collection season if diversion under the appropriation results in injury to holders of legal downstream senior water rights.

(B) If the applicant holds collected water in a reservoir, as defined by Section 6004.5, the applicant may be required to bypass or release water through, over, or around the dam. If the release of the collected water would not effectively satisfy the prior downstream water rights, the applicant may be required to otherwise compensate the holders of the prior rights for any injury caused.

(4) All appropriations are issued subject to available flows. If the source contains treated wastewater, water imported from another stream system, or return flow from other projects, the state makes no guarantee that the supply will continue.

(5) The appropriation does not authorize any act that results in the taking of a threatened, endangered, or candidate species, or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) or the federal Endangered Species Act (16 U.S.C. Section 1531 et seq.).

(6) The appropriation is subject to the applicable board water measurement and reporting regulations.

(c) The board shall adopt general conditions and, if necessary, amend existing general conditions for the registration of small irrigation use for purposes not described in subdivision (a) no later than June 30, 2018.

(d) In addition to any fees imposed by the board in accordance with Section 1228.3 and Section 1525, the following fees for small

1 irrigation use registrations shall be paid to the Department of Fish  
2 and Wildlife:

3 (1) A registration fee of five hundred dollars (\$500).

4 (2) A renewal of registration fee of two hundred fifty dollars  
5 (\$250).

6 *(e) Beginning January 1, 2020, the board may periodically*  
7 *adopt regulations to update the general conditions specified in*  
8 *this section.*

9 *(f) (1) A registration for small irrigation use pursuant to this*  
10 *article is not authorized until the board establishes general*  
11 *conditions for small irrigation use pursuant to subdivision (a) of*  
12 *Section 1228.6 and this section.*

13 *(2) The board may establish general conditions for some*  
14 *methods of diversion or categories of small irrigation use before*  
15 *establishing general conditions for other methods or categories,*  
16 *in which case a registration for small irrigation use is authorized*  
17 *only for those methods or categories for which the board has*  
18 *established general conditions for the protection of instream*  
19 *beneficial uses.*

20 SEC. 5. Section 1229.1 of the Water Code is amended to read:

21 1229.1. The board may issue and renew registrations on those  
22 stream segments for which the Director of Fish and Wildlife  
23 establishes proposed streamflow requirements pursuant to Section  
24 10002 of the Public Resources Code, if the registration includes  
25 conditions consistent with the proposed streamflow requirements.